REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SEP ING FRANCE FINANCE,
Petitioner,

- versus -

C.T.A. CASE NO. 5642

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 23 2000

x - x

DECISION

The petition at bar seeks the refund of the amount of P18,869,345.87 allegedly representing the 20% final withholding taxes (FWT) withheld by Land Bank of the Philippines on Petitioner's interest income (discount) on its investments in Treasury Bills in the Philippines during the year 1996.

As represented, Petitioner is a non-resident foreign corporation, organized and existing under the laws of the Republic of France, with its principal office at c/o ING – Barings Bank N.V. 21 Bd de la Madelaine 75001 Paris, France.

In the year 1996, Petitioner allegedly purchased at a discount the following Treasury Bills (T-Bills) with a total face value of P1,036,000,000.00 from the Land Bank of the Philippines, which the latter acquired from the Bangko Sentral ng Pilipinas (BSP) in its regular primary T-Bill auction, to wit:

DATE OF PURCHASE (By Sep-Ing)	TERM OF BILLS (No. of Days)	FACE VALUE (₱)	DISCOUNT PRICE (₱)	DISCOUNT RATE (% p.a.)	TAX WITHHELD (₱)
15-May-96	91	50,000,000.00	48,735,717.82	12.912	316,071.00
22-May-96	182	100,000,000.00	94,975,414.31	13.256	1,256,146.00
22-May-96	364	100,000,000.00	90,241,572.47	13.740	2,439,607.00
3-Jul-96	183	260,000,000.00	246,879,037.97	13.245	3,280,240.51
16-Dec-96	364	526,000,000.00	468,113,593.19	12.23	11,577,281.36
TOTAL		1,036,000,000.00			18,869,345.87

The discount representing the interest earned by Land Bank on the T-Bills were subjected to the 20% final tax in accordance with Section 25(b)(5)(a) [now Section 28(B)(5)(a)] of the Tax Code by the BSP, which were accordingly remitted by the latter to the Bureau of Treasury for the account of the Bureau of Internal Revenue (BIR).

The aforesaid 20% final withholding tax was passed on by Land Bank to herein Petitioner when it made the secondary purchase of the above-mentioned T-Bills (Exhibits A to D, G and M, inclusive of sub-markings). The total amount of the 20% final withholding tax in said transactions is P18,869,345.87.

On the belief that its interest income (discount) in T-Bills is exempt from the 20% final tax, pursuant to Article 11 of the RP-France Tax Treaty, Petitioner filed three claims for refund with the BIR on June 10, 1996, August 6, 1996 and January 17, 1997 (Exhibits N, O and P).

The said claims for refund were not acted upon by Respondent, hence, on May 12, 1998, Petitioner filed with this Court the instant Petition for Review.

It is the principal submission of the Petitioner that is entitled to the refund prayed for because Respondent has no legal basis to collect the 20% final withholding tax on its interest income (discount) on Philippine T-Bills. It argued that while the Tax Code subjects interest on foreign loans to a 20% final tax, the same income, when paid by the Philippine government to a resident of France, is exempted from income tax, including the 20% final withholding tax, invoking Article 11 of the RP-France Tax Treaty, the pertinent portion of which is quoted hereunder:

Article 11
INTEREST

"1. Interest arising in a Contracting State paid to a resident of the other Contracting State may be taxed in the other State.

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 15 percent of the amount of interest.

3. Notwithstanding the provisions of paragraph 2,

(a) Interest arising in a Contracting State in respect of a bond, debenture or similar obligation of the government of the first-mentioned Contracting State or a political subdivision or local authority thereof, shall, provided that the interest is beneficially owned by a resident of the other Contracting State, be taxable only in that other Contracting State;

(b) Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other Contracting State, if it is paid in respect of a loan made, guaranteed or insured, or a credit extended or insured by:

(i) in the case of France, the Banque Francaise du Commerce Exterieur BFCE or the Compagnie Francaise d'Assurance pour le Commerce Exterieur COFACE; and

(ii) in the case of the Philippines, the Central bank of the Philippines;

or such lending institutions as is specified and agreed in letters exchanged between the competent authorities of the Contracting State. x x x"

Petitioner further claims that in BIR Ruling No. DA-438-96 dated November 22, 1996 (Exhibit L) which it secured from Respondent, the latter explicitly ruled that Petitioner is entitled to claim as refund the 20% final tax withheld on the interest income from the purchase of T-Bills by Petitioner. The pertinent portion of the ruling states as follows:

> "It is clear from the aforequoted provisions of the RP-France and the RP-Netherlands Tax Treaties that interest income arising from the Philippines shall be exempt from Philippine income tax if the payor of the interest is the government of the Philippines or a local authority thereof. Considering that the payor of interest derived from Philippine Government Treasury Bills is the Philippine government, interest income that may be derived by residents of France and the Netherlands from said Philippine income tax under Section 25(b)(5)(a) of the Tax Code, as amended, but are subject to tax only in France and in the Netherlands, respectively.
>
> Accordingly, the 20% withholding tax on the interest income automatically withheld by the Bureau of Treasury from the purchase by SEP ING France and the Dutch Investors of Philippine treasury bills may be claimed as a refund. In this regard, SEP ING France Finance and the Dutch Investors may submit the claim for refund and pertinent supporting documents to the Appellate Division for appropriate investigation and action. (BIR Ruling No. 020-96 dated February 21, 1996)"

It was further represented that in BIR Ruling Nos. 020-96 and 047-96, dated February 21, 1996 and April 3, 1996, respectively, Respondent likewise confirmed that the subject interest income is exempt from Philippine income tax and consequently from the withholding tax. Thus, Petitioner conclude that since the instant claim for refund is supported by legal precedents and is factually undisputed as well, the refund is in order.

Respondent did not in fact dispute the allegations of Petitioner but merely stated for the record that since tax refunds are in the nature of tax exemptions, the same are to be construed in *strictissimi juris* against the person or entity claiming the exemption. In the instant case, as Petitioner failed to prove its entitlement to the refund sought for with pertinent supporting documents, its claim for refund must be dismissed.

The issue that comes to the fore for our consideration is whether or not the interest income (discounts) earned by Petitioner in its investments in Philippine T-Bill is exempt from Philippine income tax, and consequently, from the 20% final withholding tax.

The provisions of the RP-France Tax Treaty, specifically Article 11(3)(a) thereof, *supra*, are clear in its import, that to avoid double taxation, to prevent fiscal evasion with respect to taxes on income, and to encourage international trade and investment, interest income earned by a resident of France from Philippine government's bond, debenture or other similar obligation shall not be taxable in the Philippines as the same is subject to tax in France. Since the interest income (discount) from the T-Bills which were purchased by Petitioner from Land Bank falls within the ambit of Article 11(3)(a) of said treaty, the same income should not be subject to Philippine income tax, and consequently, the 20% final withholding tax. As ruled by the Court of Appeals in the case of **BPI Family Bank vs. Commissioner of Internal Revenue, G.R. SP No. 29853, September 19, 1994,** such securities (T-Bills) represent a direct, unconditional and general obligation of the Philippine Government. It is construed in the Tax Code as certificates of indebtedness, evidence of indebtedness, or certificates of obligations, thus, falling squarely under the provisions of Article II(3)(a) of the RP-France Tax Treaty, thus should not be subjected to the 20% final withholding tax.

Petitioner's claim for refund is further buttressed by BIR Ruling No. DA-438-96, dated November 22, 1996. The law presumes that official duty has been performed and therefore, Respondent is considered to have gone over the laws applicable and found that Petitioner is indeed entitled to tax exemption. There is therefore no rhyme or reason why Respondent would persist in its stand to have the instant claim for refund denied. BIR Ruling No. DA-438-96 dated November 22, 1996 (Exhibit L) has unequivocally declared that the 20% withholding tax on the interest income automatically withheld by the Bureau of Treasury from the purchase of Petitioner of Philippine Treasury bills may be claimed as a refund, thus Respondent is now estopped from questioning its earlier stand on the matter.

The case before us hardly presents a gripping question. As thus shown, the basis for the claim is not short of specific support in terms of tractable data openly laid and disclosed. Going by the records, the Court finds that Petitioner has adduced sufficient evidence to prove its claimed refund. It has shown (1) that it purchased Philippine T-Bills from Land Bank on various dates in 1996 and was made to pay the 20% final tax on the discount in the aggregate amount of P18,869,345.87 (Exhibits A to D, G and M), (2) that the said amount of final tax was actually remitted to the BIR (Exhibits Q and R), (3) that the RP-France Tax Treaty exempts Petitioner from paying the tax on interest income in Philippine T-Bills and finally, (4) that it has filed its claim for refund within the two-year prescriptive period as provided for by the Tax Code. Respondent on the other hand, points to no factual errors nor superfluities which need to be overcome. It did not object to the existence of the exhibits offered by the Petitioner as proof of its claimed refund but only took exception to the materiality, relevancy and individual/collective purpose for which the same were offered in evidence. Despite its reservation, Respondent was not heard to complain about the authenticity of the contents of these documents, thus Respondent is thereby considered to have even vouched the veracity of the Petitioner's exhibits. Hence, under the facts and circumstances obtaining, the Court rules in favor of the Petitioner.

IN THE LIGHT OF ALL THE FOREGOING, the instant claim for refund is hereby **GRANTED**. Respondent is **ORDERED** to **REFUND** the Petitioner the sum of P18,869,345.87, representing the 20% final tax erroneously withheld on Petitioner's interest income (discount) on Philippine T-Bills. No costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge